INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
FINANCING PROCEDURES CHECKLISTS

INTRODUCTION

NOTE: ***The following is an Exposure Discussion Draft for discussion and consideration within IMLA. It is not a final product and is subject to review, comment and change as to the wisdom or wording of specific items and as to the desirability of such an undertaking.***

These Financing Procedures Checklists are intended to provide guidance, in the form of checklists and limited discussion, for members of the International Municipal Lawyers Association while serving as legal counsel to their local jurisdictions in financing activities.[1]

Because financing transactions are heavily dependent upon the facts and circumstances of each specific transaction, the application of these Checklists will vary from transaction to transaction. These Checklists are not intended for application in facts and circumstances in which local counsel to a jurisdiction is not expected by the jurisdiction to play an active role in the financing transaction. In addition, in specific transactions, one or more other participants may undertake roles enumerated in these Checklists.

These Checklists are advisory only, and do not necessarily represent a consensus among local counsel on each item in the Checklists. Instead, these Checklists emphasize cautious steps that local jurisdictions may consider for their own protection, and are not intended to create legal standards or obligations. Local counsel should determine for themselves whether to apply particular Checklist items.

In the case of conduit financings in which private profit-making or nonprofit borrowers are the substantive credits, the Checklists, or portions thereof, are not necessarily applicable to counsel to the governmental issuers.

These Checklists are organized as brief and simplified suggestions for consideration in very generalized subject categories. IMLA members may wish to consider implementing more detailed procedures for their own use.

The key is that, even though you may not be a finance specialist, your role as your jurisdiction's internal or local legal counsel gives you an opportunity to assume a proactive stance in managing your jurisdiction's legal affairs in the finance context and the prospect for preventing undue problems in the future. Your jurisdiction has a lot of money at stake, and therefore, significant care is warranted.

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[1] These Checklists are not intended to be in lieu or derogation of standards of or guidance provided by attorney regulatory bodies, the American Bar Association or the National Association of Bond Lawyers.

The Securities and Exchange Commission has asserted repeatedly that "issuers are primarily responsible for the content of their disclosure documents and may be held liable under the federal securities laws for misleading disclosure. … Because they are ultimately liable for the content of their disclosure, issuers should insist that any persons retained to assist in the preparation of their disclosure documents have a professional understanding of the disclosure requirements under the federal securities laws." Municipal Securities Disclosure, SEC Rel. No. 34-26985, n. 84 (July 10, 1989).[2]

The SEC further has asserted that "[i]ssuers may not blindly rely on professionals such as bond counsel, to ensure that factual representations being made by the issuers are accurate. … [T]he practice of executing offering documents containing factual representations, without first reading the documents to ascertain whether they were accurate as to the essential purposes of the offering, [is] at least reckless and therefore sufficient to establish scienter." *In the Matter of Carthage, MS, et al.,* SEC Rel. Nos. 33-7554, 34-40194 (July 13, 1998).

The SEC also expects governing body members (for example, City Council members) to review disclosure documents in the light of their unique knowledge and perspectives. For example, in the Orange County matter, the SEC criticized members of the County's Board of Supervisors, as follows:

"Based on the Supervisors' significant knowledge relating to the County's finances, they should have understood the materiality of … information to the County's ability to repay the municipal securities. The Supervisors therefore had a duty to take steps appropriate under the circumstances to assure accurate disclosure was made to investors regarding this material information. The Supervisors, however, failed to take appropriate steps. For example, while the Supervisors believed that they could rely on the County's officials, employees or other agents with respect to these offerings, they never questioned these officials, employees or other agents regarding the disclosure of this information; nor did they become familiar with the disclosure regarding the County's financial condition. Had they taken such or similar steps, it should have been apparent to each Supervisor, in light of his or her knowledge, that the disclosure regarding the County's financial condition may have been materially false or misleading." Report of Investigation in the Matter of County of Orange, CA, as It Relates to the Conduct of the Members of the Board of Supervisors, SEC Release No. 34-36761 (Jan. 24, 1996).

In other words, in the view of the SEC, local jurisdictions cannot simply rely upon their professionals to discharge appropriately the jurisdictions' financing responsibilities. With respect to reliance on the advice of professionals, the SEC outlined the following criteria:

"Courts have held that, in order to successfully assert a reliance-on-professionals defense, an issuer must demonstrate that it: **(1)** made complete disclosure to its counsel or accountant; **(2)** requested the professional's advice as to the legality of the contemplated

[2] While certain market participants may disagree to varying extents with the SEC's positions, the Commission is the chief enforcer of the securities laws in the market, and its views should be taken very seriously.

action; **(3)** received advice that the conduct was legal; and **(4)** relied in good faith on that advice." *In the Matter of the City of Miami*, SEC Rel. Nos. 33-8213, 34-47552 at n. 40 (March 21, 2003).

Therefore, in order for local jurisdictions to manage their financings appropriately, and to discharge their "primary" responsibilities, local jurisdictions may wish to gain a greater awareness of what those responsibilities may be, and of steps that may be taken to protect themselves.

A fundamental purpose of the securities laws is to protect investors. In that connection, a critical issue to keep in mind is that enforcement or private[3] litigation on such matters is extremely expensive and can severely disrupt your jurisdiction for many years.[4] San Diego, for example, was unable to access the market for several years, and spent tens of millions of dollars investigating and remedying its failures to disclose to investors and the market, in official statements and continuing disclosure information, and through rating agency presentations, the unfunded status of the City's pension plan and health benefits for retirees. *In the Matter of the City of San Diego*, SEC Rel. Nos. 33-8751, 34-54745 (Nov. 14, 2006).

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[3] With respect to private litigation under state securities laws in which a special district and its board members paid settlements, see, *e.g*., *Trimble, et al. v. Holmes Harbor Sewer District, et al*., Class Action No. 01-2-00751-8 (Third Amended Complaint dated Sept. 2002, Super. Ct. of Island County, WA); *Trimble, et al. v. Holmes Harbor Sewer District, et al*., Class Action No. 01-2-00751-8 (Settlement Agreement dated Nov. 2003, at 3, 8, Super. Ct. of Island County, WA).

[4] The following remarks express views of Securities and Commission Staff:

> Municipal bond issuers have primary responsibility for disclosure. As a result, it is important that they use experienced, qualified attorneys and other professionals who are familiar with the securities laws on their transactions. In the last few years there has seemed to be an increasing trend to choose transaction participants, including underwriters and lawyers, primarily on the basis of cost. We certainly appreciate the importance to municipal officials and their constituents of lower costs. It is important to keep quality and competence in mind as well, because ultimately your own liability and that of your local government may be at stake. You do not want to find yourselves, in retrospect, to have been penny wise and pound foolish in hiring persons with little experience or knowledge in securities disclosure. The securities laws have tough enforcement provisions. An issuer will very quickly incur costs far in excess of the amount saved by hiring the low and incompetent bidder if it gets involved in an enforcement action or private lawsuit.
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> During my years in private practice, I have observed two quite different approaches of lawyers towards disclosure and the securities laws: that of the planner and that of the litigator. The planner, who takes the long view and recognizes the danger of liability and costliness of investigations and litigation, counsels his client to take moderate positions, well within established legal principles. The litigator is more aggressive, willing to take more risk and to push the envelope for his client. As a result, after bonds have been issued, issuers advised by litigator-types may be faced with the challenge of backing away from the precipice of disclosure fraud. Keep in mind that liability is determined by courts, not lawyers in private practice. An issuer being advised by an aggressive litigator should recognize the potential risk. Your lawyer may think you are close to, but not over, the edge, but if a court sees it otherwise—and if you've gone over the edge—you are the one who loses. *If safety is your concern, when in doubt, disclose.* [Emphasis in original.] Remarks of Martha Mahan Haines, Office of Municipal Securities, Securities and Exchange Commission Before the Michigan Municipal Finance Officers Association (Sept. 19, 2000).

Relatively small additional financing costs and delays, if necessary, may be justified in order to avoid such seriously undesirable consequences. Because securities law actions often are heavily fact dependent, procedures followed by other jurisdictions under different facts and circumstances may not protect your jurisdiction in its own unique financing activities.

TABLE OF CONTENTS

A. EMPLOYMENT OF PROFESSIONALS

KEYPOINT CHECKLIST

√ Use written contracts directly with professionals.

√ Comply with state procurement laws.

√ Seek independent advice. Be careful about conflicts of interest when professionals change roles.

√ Be aware that legal and financial professionals participating in the transaction are relying upon your jurisdiction for information.

√ Be aware that legal and financial professionals participating in the transaction, unless contractually obligated or otherwise undertaking to do so, may not consider themselves responsible for rendering advice to your jurisdiction.

√ Your jurisdiction's official statement should be prepared by experienced professionals having direct contractual relationships with your jurisdiction.

√ Be aware of limitations of disclosure opinions.

√ A disclosure opinion is best rendered by a professional with whom your jurisdiction has a direct contractual relationship.

1. Have direct formal written contractual relationships with the legal and financial professionals upon whom you are relying to advise your jurisdiction in securities offerings. Ensure that your jurisdiction has complied with applicable state procurement laws.

2. Your jurisdiction should employ directly the professionals preparing the official statement—your jurisdiction, as issuer, is considered by the SEC to be "primarily responsible" for that document. Your jurisdiction can employ disclosure counsel or a financial advisor directly, rather than allowing an underwriter or underwriter counsel, with whom you have no legal or financial advisory contract with respect to official statement preparation, to prepare the document for which your jurisdiction may be "ultimately liable." The fees that otherwise might be payable to underwriter counsel can be reduced accordingly.

3. In employing financial professionals, understand the key distinctions between those with a responsibility to render independent advice in the best interests of your jurisdiction and those with interests that are adverse, contractually or in practical terms, to the business interests of your jurisdiction with reference to the terms of various transactional contracts (*e.g.*, a bond purchase contract), the securities, the purchase price, interest rates, guaranteed investment contracts, swaps and other derivative products, and other aspects of the transaction.

Evaluate the advice your jurisdiction receives accordingly. If a professional seeks to change roles during the conduct of a transaction, ask that all associated conflicts of interest and material impacts upon your jurisdiction be disclosed fully in writing to the governing body of your jurisdiction.

4. Utilize written contracts with your jurisdiction's professionals. Spell out in specific terms all services your jurisdiction expects them to perform and the advice your jurisdiction expects to receive, whether your jurisdiction should receive independent, disinterested advice, and the standards of professional care to which your jurisdiction expects them to adhere.

5. Be aware that many legal and financial professionals, including some bond counsel and dealers, may not consider themselves responsible to render independent, or any, affirmative advice to your jurisdiction unless they are contractually obligated or otherwise undertake to do so.

6. Understand the limitations of disclosure opinions. Typically, such opinions are written only in negative terms (*e.g.*, "nothing has come to our attention") and are based upon a limited review. Be aware that the opinions *do not* state that appropriate disclosure has been made. Review the exceptions to such opinions (*e.g.*, financial information as to which lawyers may not be expert), and negotiate when other exceptions may be overly-broad (*e.g.*, when the exceptions extend to all appendices that contain important information). The appendices in official statements sometimes contain little information, and sometimes they are prepared to include virtually everything of disclosure significance. Thus, an opinion's exclusion of appendix information may be of little consequence or it may have far-reaching implications. At the least, you should be aware of what is and what is not included within the scope of an opinion.

In addition, underwriter counsel opinions are directed to the underwriters as the underwriter counsel's clients, and are not likely to be addressed to your jurisdiction, thus restricting your jurisdiction's ability to rely on them (as opposed to disclosure counsel opinions or financial advisor certifications that are addressed to your jurisdiction, as the issuer). Indeed, your jurisdiction is likely to find that underwriters, underwriter counsel and other professionals are relying upon your jurisdiction regarding the material accuracy and completeness of disclosure, not the reverse. They may be expecting your jurisdiction to bring important information to their attention. That is why your jurisdiction is required to make disclosure representations in bond purchase agreements and in certifications at closings. Your jurisdiction may need to retain counsel to advise it on those matters.

7. If you need advice on a specific subject, see Part B below regarding steps for obtaining affirmative advice.

B. RELIANCE ON ADVICE OF LEGAL & FINANCIAL PROFESSIONALS

KEYPOINT CHECKLIST

√ Your jurisdiction, as issuer, is considered to have a "primary" responsibility and "ultimate" liability for disclosure.

√ Do not rely blindly upon professionals. Your jurisdiction may know more than they do.

√ If your jurisdiction is seeking to rely upon professional advice, ask well-formulated formal written questions, obtain written answers, and satisfy the SEC's requirements for such reliance.

√ Read everything that your jurisdiction is signing.

√ If you do not understand something, keeping in mind that you are not an expert, ask questions until you do.

1. Your jurisdiction, as issuer, is considered by the Securities and Exchange Commission to have a "primary" responsibility and "ultimate" liability for disclosure. If something goes wrong after a securities offering, your jurisdiction may find litigators representing various professionals, or even enforcement agencies, pointing fingers at your jurisdiction.

2. Rely reasonably on advice of professionals—unconditional "blind" reliance is misplaced. See, *e.g*., *In the Matter of the City of Miami, FL,* SEC Release Nos. 33-8213, 34-47552 (March 21, 2003); *In the Matter of Carthage, MS, et al.*, SEC Release Nos. 33-7554, 34-40194 (July 13, 1998)*; In the Matter of the County of Nevada, et al. (County of Nevada, CA),* SEC Release No. 7535 (May 5, 1998); *In the Matter of Neshannock Township, PA, School District*, SEC Release Nos. 33-8411, 34-49600 (Apr. 22, 2004).

3. With respect to significant questions, do not simply rely upon generalized or oral advice from professionals, and do not assume that the professionals are asking all of the relevant questions.

4. When in doubt, direct to qualified professionals specific and well-formulated questions (preferably in written form) on which you wish to be advised. Be sure to disclose to the professionals all information that may be relevant to the questions on which you are asking that the professionals render advice to your jurisdiction.

5. Receive responses to those questions that are especially significant, if any, in formal opinion letters, or in formal written reports, studies or other analyses.

6. In establishing "good faith" reliance, do not rely upon opinions, reports, studies or other analyses when your jurisdiction possesses or has access to information at odds with the conclusions therein or with the assumptions upon which the conclusions are based.

7. Read, and question anything you do not understand in, representations, warranties or certifications rendered by your jurisdiction and in legal opinions you render, even if the representations, warranties, certifications or opinions have been prepared for your jurisdiction, or for you, by professionals serving your jurisdiction. Once you understand the meaning of technical language, it may become apparent that the representations, warranties or certifications are not materially accurate or complete, or that your jurisdiction may be aware of relevant information of which the professionals are unaware. See Part E herein.

8. Do not let complexity or technical language deter you from understanding what your jurisdiction is signing. Do not assume that language is correct simply because a professional has prepared it for your jurisdiction to sign. Instead, ask your professionals to explain it to you until you do understand it. You are not an expert in such subject areas, which is an important reason why you employ outside professionals. Therefore, you should not be embarrassed by your own lack of understanding of narrowly focused technical language. Among other things, representations in tax certificates or tax agreements are often quite lengthy and intensely technical, but may contain significant information. See, *e.g.*, *In the Matter of Neshannock Township, PA, School District*, SEC Release Nos. 33-8411, 34-49600 (Apr. 22, 2004).

C. RELIANCE ON SPECIALIZED EXPERTS
(*e.g.*, feasibility consultants, appraisers, auditors)

KEYPOINT CHECKLIST

√ Your jurisdiction should employ, have written contracts with, and pay experts (with reimbursement from others, as appropriate).

√ Review expert reports carefully and completely.

√ Experts should identify their assumptions in their reports, and should state in their reports that the assumptions are reasonable.

√ Expert work products should be addressed to your jurisdiction.

√ Satisfy yourself as to experts' independence, competence, appearance of performance, applicable industry standards, compliance with those standards, and access to information. Expert reports should speak to such matters.

√ Obtain written consents from experts as to use of their names and work products in official statements and to your jurisdiction's reliance upon them as experts.

Experts: Experts in a municipal securities offering may be feasibility analysts, property appraisers, market analysts, auditors, lawyers or a variety of other parties with specialized expertise who prepare, as their work products, opinions, reports, studies or other analyses that assist in the financing process.

1. Your jurisdiction should have direct contractual relationships with experts preparing opinions, reports, studies or other analyses used in official statements or upon which your jurisdiction otherwise is placing reliance. Your jurisdiction should be the party that pays the experts. It may be appropriate for your jurisdiction to obtain reimbursement for those costs from others involved in the transaction. In the contracts (and in separate certifications at the transactional closings), the experts should confirm (and re-confirm) their independence and that they are not being paid by, and do not have significantly conflicting relationships with, other parties interested in the transaction.

2. With respect to those opinions, reports, studies or other analyses, read carefully the entire opinions, reports, studies or other analyses produced by experts, not simply the conclusions. If you see anything departing from information available to your jurisdiction, raise direct and specific questions.

3. Ask the experts to identify clearly, in their opinions, reports, studies or other analyses, their assumptions upon which their conclusions are based (preferably in a segregated section), and further ask that the experts inform your jurisdiction in their opinions, reports, studies or other analyses as to whether, in the experts' professional judgment, those assumptions are reasonable. Remember that, if the

assumptions are not reasonable, the conclusions flowing from the assumptions may be flawed or unreliable.

4. If your jurisdiction is relying upon opinions, reports, studies or other analyses, ask that those documents be addressed to your jurisdiction, so that your jurisdiction's reliance is explicit.

5. Ask that the opinions, reports, studies or other analyses contemplate specifically their presentation to investors in official statements, and that your jurisdiction, the investors and professionals working in the transaction be recognized explicitly therein as entitled to rely thereon.

6. Determine that the experts appear to be competent and expert in their fields. Ask the experts to confirm in writing their professional competence and expertise . That may be as simple as knowing their reputations and reviewing the materials they provide in connection with their employment by your jurisdiction. If you do not know their reputations, check references and ask other persons you know, if any, who may have had experience with the experts.

7. Ask the experts whether they are or have been the subject of any legal or administrative proceedings and, if so, obtain written information regarding the details thereof.

8. Ask the experts what professional standards govern their work, unless (as often in the case of lawyers and auditors) you know what standards apply. If in doubt, ask that the expert opinions, reports, studies or other analyses identify those standards, stating that the opinions, reports, studies or other analyses conform to those standards. If there are no such standards, ask that the opinions, reports, studies or other analyses so state, and that such information be disclosed to investors.

9. Determine whether the experts appear to be actually performing their assigned responsibilities in accordance with professional standards, based upon your reasonable inquiry and absence of reason to know of nonperformance.

10. Determine that there are no apparent disabling conflicts of interest affecting the experts and the expert's work. Among other things, do not rely solely on experts employed by, or having significant past or present business relationships with, third parties interested in the financing. Instead, employ your own independent experts through direct contractual relationships with your jurisdiction, and if appropriate, obtain reimbursement from the interested parties for the costs.

11. Determine that the experts have apparent access to all information they need to reach the conclusions in the opinions, reports, studies or other analyses on which you wish to receive information. Ask the experts to confirm in writing their satisfaction with their informational access.

12. With the written consent of the experts, clearly identify to the other parties in the transaction, and disclose to investors in the official statement, the roles being performed by the experts and the extent to which there is reliance by your jurisdiction on the expertise of the experts and upon the expert's work as expert work products. In such instances, inform investors in the official statement that your jurisdiction is relying upon the experts as experts in their fields of expertise, identifying those fields. See, *e.g.*, *In the Matter of the City of Syracuse, NY, et al.*, SEC Release Nos. 33-7460, 34-39149, Accounting and Auditing Release No. 970 (Sept. 30, 1997).

13. Ask the experts to review, and consent in writing to, the use of their work products in the official statement, and all descriptions or summaries contained in the official statement of those work products, the experts themselves, their roles, and your jurisdiction's reliance upon the experts as experts.

14. If your jurisdiction is aware of other opinions, reports, studies, or other analyses reaching contrary conclusions, even if prepared for others or at an earlier date, make appropriate disclosure in that regard. See, *e.g.*, *SEC v. Senex Corp.*, 399 F.Supp. 497 (E.D. KY 1975), *aff'd per curiam* No. 75-1656 (6th Cir. May 7, 1976); SEC Lit. Rels. Nos. 6451 (July 24, 1974), 6769 (March 5, 1975), and 8651 (Jan. 23, 1979); *In the Matter of Ferguson*, SEC Rel. No. 5523 (August 21, 1974).

D. INTERNAL INFORMATIONAL DUE DILIGENCE PROCEDURES

KEYPOINT CHECKLIST

√ Review carefully the entire official statement.

√ Ask for reviews of specific categories of information by potentially knowledgeable sources within your jurisdiction as to material accuracy and completeness and review potentially relevant source documents.

√ Review outdated ("stale") financial statements, expert reports and other information with special care. Update that information, as appropriate, even if it results in a delay.

√ Ask for a complete review of the official statement at a high executive or administrative level within your jurisdiction.

√ Avoid overstatement and other casually framed language.

√ Deliver the final versions of official statements to the members of your jurisdiction's governing body a sufficient time prior to their action in approving the document to accommodate their careful review.

√ Explain to your jurisdiction's executive or administrative officials and governing body members why it is important for them to review the official statement carefully.

√ Follow your jurisdiction's established internal financing guidelines or checklists, or ask your governing body to make findings as to why that is not done.

Materiality: In general, information is considered to be "material" under the federal securities laws, if it would affect the investment judgment of a reasonable investor. That is, as to an omitted fact, the fact is "material," if the "omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 2132, 48 L.Ed.2d 757 (1976); *Basic Inc. v. Levinson*, 485 U.S. 224, 232, 108 S.Ct. 978, 983, 99 L.Ed.2d 194 (1987).

Due Diligence: In general, "due diligence" is the careful process of conducting a sufficient affirmative investigation of information used in an official statement to gain a reasonable basis for belief that material misstatements are not made and that material information is provided in the document.

1. Review the entire official statement carefully within your own office.

2. Ask appropriate personnel within your jurisdiction to review and comment upon the accuracy and completeness of official statement information within their

knowledge (*e.g.*, the Finance Department could review and approve the financial statements and financial information in the official statement; the Public Works Department could review and comment upon descriptions of projects and their status and of your jurisdiction's facilities; the Human Relations Department could review and comment upon information relating to employees; insurance personnel could review and comment upon insurance information; pension administrators could review and comment upon information regarding pension and health care plans (and other non-pension benefit plans) and their funding status, *etc*.). See, *e.g.*, *In the Matter of the City of San Diego*, SEC Rel. Nos. 33-8751, 34-54745 (Nov. 14, 2006).

3. An appropriate affirmative informational investigation includes, in general, asking questions, speaking with knowledgeable sources that are likely to be productive with respect to the desired information, and reviewing applicable documentation that is likely to be informative. What is a potentially useful and reliable source of specific information is a matter of judgment that depends heavily upon the particular facts and circumstances.

4. The mere fact that information is uncertain does not mean that it should not be disclosed, if it is material. Those facts and circumstances can be very difficult. Consider how to write appropriate disclosure describing what is known and the ambiguities and current status of knowledge. See, *e.g.*, *In the Matter of the Massachusetts Turnpike Authority and James J. Kerasiotes*, SEC Release No. 33-8260 (July 31, 2003).

5. Be appropriately precise. Do not disclose that something "may" occur, when it definitely will occur. See, *e.g.*, *In the Matter of Dauphin County, PA, General Authority*, SEC Release No. 33-8415 (Apr. 26, 2004).

6. Be especially careful in reviews of old financial statements, expert opinions, reports, studies or other analyses, and other information that may have become outdated ("stale"). Significant changes may have occurred in the interim, and may require updated disclosure, even if the updating process results in a delay. See, *e.g.*, *In the Matter of Maricopa County, AZ*, SEC Release Nos. 33-7354, 34-37779 (Oct. 3, 1996).

7. Focus on language carefully and with precision. Avoid overstatement in official statements (*e.g.*, "The City of ABC is the most desirable city in which to live in the United States!!"). Avoid language that is written casually, perhaps adapted from documents prepared for other purposes, without the precision required for a disclosure document directed to investors.

8. In reviewing official statements, keep in mind that the concept of disclosing material information focuses upon information that would affect investment decisions of investors. Such information (both positive and negative) may be reflected in municipal securities prices. Materiality does not require that municipal securities be in default or even at risk of default. See, *e.g.*, *In the*

Matter of the Massachusetts Turnpike Authority and James J. Kerasiotes, SEC Release No. 33-8260 (July 31, 2003) (some bond issues supported by Commonwealth guarantee or bond insurance); *In the Matter of the City of Miami, FL,* SEC Release Nos. 33-8213, 34-47552 (March 21, 2003) (insured bonds); *In the Matter of Maricopa County, AZ*, SEC Release Nos. 33-7354, 34-37779 (Oct. 3, 1996) (rated general obligation bonds for large community).

9. Ask appropriate executive and administrative personnel in your jurisdiction to review the entire official statement carefully.

10. Provide the official statement to members of your governing body a sufficient time (*e.g.*, one to two weeks) prior to the meeting at which they are to approve the use of the official statement. Advise the members of the importance of their careful review of the official statement in the securities transaction as a disclosure document directed to investors in connection with investment decisions. The members (as well as other officials of your jurisdiction) should be able to have access to, and to ask questions of, knowledgeable professionals and other sources in order for the members and officials to satisfy themselves as to the accuracy and completeness of information for which those members (or other officials) are responsible. See, *e.g.*, Report of Investigation in the Matter of County of Orange, CA, as It Relates to the Conduct of the Members of the Board of Supervisors, SEC Release No. 34-36761 (Jan. 24, 1996); *In the Matter of County of Orange, California; Orange County Flood Control District; and County of Orange, California Board of Supervisors*, Release Nos. 33-7260, 34-36760 (Jan. 24, 1996); *In the Matter of the City of San Diego*, SEC Rel. Nos. 33-8751, 34- 54745 (Nov. 14, 2006).

11. Such careful review and access to information serves the members and officials well, since a number of the Securities and Exchange Commission actions against issuers cited herein also were against officials. See, *e.g.*, *In the Matter of the City of Syracuse, NY, Warren D. Simpson, and Edward D. Polgreen*, SEC Release Nos. 33-7460, 34-39149, Accounting and Auditing Enforcement Release No. 970 (Sept. 30, 1997); *SEC v. Citron and Raabe*, Litigation Release No. 14913 (May 17, 1996); *In the Matter of Odio*, SEC Release Nos. 33-7851, 34-42690, Accounting and Auditing Enforcement Release No. 1248 (Apr. 14, 2000); *In the Matter of Surana*, SEC Release Nos. 33-7895, 34-43325 (Sept. 22, 2000); *In the Matter of the Massachusetts Turnpike Authority and James J. Kerasiotes*, SEC Release No. 33-8260 (July 31, 2003).

12. Comply with existing policies and guidelines or checklists previously adopted by your jurisdiction relating to financing transactions. If particular applicable policies or guidelines or checklists are not followed in a transaction, it is best for your jurisdiction's governing body to adopt and record findings setting forth the basis for not doing so. See, *e.g.*, *In the Matter of the County of Nevada, et al.*, Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, SEC File No. File No. 3-9542.

E. YOUR JURISDICTION'S REPRESENTATIONS & CERTIFICATIONS

KEYPOINT CHECKLIST

√ Read carefully all agreements, representations and certifications your jurisdiction is signing in the transaction. As necessary, consult with other officials of your jurisdiction for their review of particular provisions.

√ Ask for explanations of any agreement, representation or certification you do not understand.

√ Correct any agreement, representation or certification that is erroneous.

√ Ensure that the agreements, representations and certifications are fair to your jurisdiction.

√ Do not let your jurisdiction represent or certify, in an unqualified manner, anything that it does not know of its own knowledge.

1. Your jurisdiction will be asked to make a number of agreements, representations and certifications at various times during the conduct of financing transactions. Those representations and certifications should be reviewed carefully for accuracy and completeness, as well as for fairness to your jurisdiction. In some cases, you may need to consult with other knowledgeable officials about matters as to which they may have information.

2. The representations and certifications may relate to tax issues,[5] operational issues or disclosure issues, among other things. The representations may be contained in bond resolutions, indentures, leases or installment purchase agreements, bond purchase agreements, or a variety of closing certificates.

3. Such agreements, representations and certifications will extended to many subject areas. They should not be treated as "boiler plate," but rather as

[5] See *In the Matter of Weiss*, SEC Initial Decision Rel. No. 275 (Feb. 25, 2005), *aff'd*. SEC Rel. Nos. 33-8641, 34-52875 (Dec. 2, 2005), in which bond counsel was considered responsible to explain to an issuer the significance of certain federal income tax requirements as to which the issuer was rendering a certification. The *Weiss* decision was upheld in *Weiss v. SEC*, 468 F. 3d 849, No. 06-1011 (DC Cir. Nov. 28, 2006).

Despite the view of the SEC as to bond counsel, the same issuer also was considered responsible when issuer officials failed to read the certifications they signed and official statements they approved. *In the Matter of Neshannock Township School District*, SEC Rel. Nos. 33-8411, 34-49600 (Apr. 22, 2004). The school district in the *Neshannock Township* action paid a monetary penalty, even though it already had paid a penalty to the Internal Revenue Service.

In the past few years, the IRS has increased significantly its audits of bond issues. As a result, a number of issuers have found themselves confronted with IRS insistence that amounts be paid to the federal Treasury, or threatening that bond investors would be taxed on the interest paid to them.

statements for which your jurisdiction may be held responsible. If the drafter of an agreement, representation or certification uses technical language or legally conclusive language, ask for a full explanation.

4. In some cases, representations and certifications simply may need to be revised for accuracy or completeness. In other cases, your jurisdiction may be unable to make requested representations or certifications.

5. In some cases, requested representations or certifications may be overly broad. The information in an official statement that is the subject of a representation or certification may encompass broadly, or make cross-references to, information provided by third parties (*e.g*., bond insurers, depositories, or providers of investment contracts, swaps or other financial instruments). In such instances, the information may require exclusion from your jurisdiction's representations and certifications.

6. In some cases, your jurisdiction may be able only to make representations or certifications to the best of its knowledge. In yet other cases, your jurisdiction may have no knowledge as to the accuracy or completeness of certain information, and in such an instance, should not make the representation or certification.

7. Some agreements in transactional documents, such as indentures and bond resolutions, or in certain states, lease purchase agreements or installment purchase agreements, may require your jurisdiction to satisfy certain standards or formulas (*e.g.*, utility rate covenants) or to comply with a variety of operational or other requirements. Such covenants are best not treated as "boiler plate" provisions, and may be negotiable to varying degrees. You should understand how those agreements may impact your jurisdiction and restrict its flexibility in the future. You should also understand the ability of your jurisdiction to comply with those provisions.

F. USE OF THIRD PARTY & PUBLIC INFORMATION

KEYPOINT CHECKLIST

√ Do not use information in an official statement unless you consider the source reliable.

√ When information used in an official statement comes from third parties, explicitly attribute the information in the official statement to those parties.

√ When third parties providing information are interested in the transaction, segregate their information as much as possible in a separate section or appendix of the official statement.

√ Obtain the third parties' written authorization for use of and approval of their information and their signatures in the segregated portion of official statement.

√ Your jurisdiction should not approve that interested third party information.

√ The third parties should certify to your jurisdiction the material accuracy and completeness of the information they provide.

Conduit Offering: A conduit securities offering is one in which your jurisdiction acts in an accommodating role to assist a nonprofit corporation or private business in obtaining funds. Your jurisdiction is not the principal party with a substantive interest in a conduit transaction.

1. Do not allow information to be used in your jurisdiction's official statement unless you consider the source of the information to be reliable or if your jurisdiction has contrary information.

2. In the official statement, identify clearly information provided by third parties or obtained from public sources, and clearly attribute the information to those parties or sources.

3. If the third parties are interested in the transaction (*e.g.*, in industrial development, health care and other conduit financings or in land-based financings), segregate in clearly identified separate sections or appendices the third-party information from the information for which your jurisdiction may be responsible.

4. Do not let your jurisdiction approve significant information provided by such third parties' interested in the transaction for presentation in the official statement. Instead, require that those third parties authorize the use of and approve their information in writing and sign the segregated portion of the official statement containing their information.

5. Require those third parties to certify to your jurisdiction and for the benefit of investors the material accuracy and completeness of the third party information.

6. In a conduit offering, as an accommodation party, your jurisdiction should not approve the official statement beyond the use of a typically brief description of your jurisdiction and its limited accommodating role.

7. Be aware that the more involved your jurisdiction becomes in the conduct of a conduit transaction and identification in the official statement, the greater the risks may be for your jurisdiction.

8. In many cases, the name on the front cover of the official statement for a conduit offering may be that of the nonprofit corporation or private business. After all, in a conduit securities offering, they are the substantive parties and the credit for the payment of the securities is their credit.

9. Even with respect to information provided by highly-rated third parties and brokers of various types of financial instruments, it is appropriate to ask for assurances that bidding processes have been properly conducted without undisclosed payments or collusion.[6]

10. It also is appropriate to ask that those parties certify that they have provided materially accurate and complete information for use in your jurisdiction's official statement or in certifications on which your jurisdiction and its professionals are relying. As an example, such a certification is appropriate when publicly available information is contained in other documents incorporated into your jurisdiction's official statements by reference (*e.g.*, documents filed with the Securities and Exchange Commission or state insurance commissions).

[6] In 2006, the Justice Department, Internal Revenue Service and Securities and Exchange Commission initiated aggressive civil and criminal investigations of third party providers of guaranteed investment contracts, forward supply contracts, swaps, options, swaptions and other instruments and services with respect to inappropriate payments and collusion regarding pricing.

G. PRIVATE PLACEMENTS

KEYPOINT CHECKLIST

√ Provide private placement investors with materially accurate and complete information, even if in a less formal format than an official statement.

√ Be aware that even documents in such transactions appearing to be form documents actually are negotiable.

√ Consider seeking a professional review of the documentation.

√ If desired, especially (but not solely) when a private placement is conducted due to special transactional risks, limit the ability of the investors to subdivide the financing documentation into certificated form and to sell it into the broader market or to unsophisticated investors.

√ Obtain disclosure to your jurisdiction of all fees paid in private placements to "lease brokers" and others.

√ Consider placing transactional costs in private placements into principal, rather than higher interest rates, and negotiate more flexible prepayment provisions.

√ In transactions involving significant risks, consider obtaining an "investment letter" from private placement investors stating that they understand risks, have received the information they need, and are conducting their own investigations, and agreeing to restrict resales.

√ Ask whether "lease brokers" or others serving in similar roles are registered as broker-dealers, and if not, why not.

Private Placement: In order to reduce issuance costs, an increasing number of local governments have begun to look to private placements, usually (but not always) to a single investor. That occurs especially as to small negotiated "lease" financings for equipment or smaller structures, such as approximately $3 million or less, although larger private placements also occur. Private placements also may be utilized in transactions entailing special risks inhibiting effective sale in the broader securities market. The desire to reduce costs may lead to less formal legal or financial procedures, such as more casual financing document preparation and avoidance of an official statement or other formal disclosure documentation. While saving costs is a laudable goal, you should consider the extent to which your jurisdiction is adequately protected in such a transaction, and how to enhance those protections.

1. There is no free lunch. In some transactions, especially private placements of obligations through "lease brokers" or similar professionals, equipment manufacturers or construction contractors, your jurisdiction may be told that

"there are no costs" or "all costs are included." Ask that disclosure of all fees to be received by "lease brokers" and others be made to your jurisdiction in writing.

2. Because undisclosed fees and other transactional costs are commonly financed through interest rates that are above prevailing market levels, such practices often lead, in turn, to high prepayment premiums or other strong prepayment restrictions. Those restrictions enable the investors who may have paid the fees to the "lease brokers" to recover their costs through the higher interest rates over time or through the premiums. Your jurisdiction may receive more favorable terms, if those costs are instead fully disclosed to your jurisdiction and placed in the principal amount of the obligations, interest rates are reduced, and more favorable prepayment and other terms are negotiated.

3. In private placements, in an effort to reduce costs, financing documents often are prepared and provided by the "lease brokers" or by the investors. Be aware that, while such documents may appear to be form documents, they commonly are negotiable. Your jurisdiction may be served well by obtaining a legal review by an experienced professional.

4. If a party is functioning as a broker-dealer, ask whether they are registered, and if not, why not.

5. While private placements often may be conducted more casually than are market securities offerings, be aware that the investors still are entitled to materially accurate and complete disclosure.

6. In some private placements, investors retain the right, explicitly or implicitly, to subdivide and certificate the obligations and then to market the certificates broadly into the market. That may occur at a time when your jurisdiction is entering the market with another financing transaction. In such a case, some jurisdictions have experienced market confusion that interfered with their other financings. If you wish to restrict such activity, you may seek to negotiate appropriate restrictions.

7. If a private placement is occurring due to the presence of significant risks that inhibit a financing in the broader market, consider asking for an "investment letter" signed by the investor that **(1)** emphasizes the risks and the investor's awareness of them; and states that the investors understand the risks, have received all information they need, and are conducting their own investigations; and **(2)** restricts subsequent distributions of the securities broadly into the market (restricting resales to investors signing the same form of letter) and prevents resales to unsophisticated investors.

If there are concerns about negotiable instrument laws, alternative mechanisms for regulating subsequent distributions may also include, for example, use of large denominations.

H. CONTINUING DISCLOSURE

KEYPOINT CHECKLIST

√ Continuing disclosure occurs in most municipal securities offerings. Exceptions include short-term or floating rate securities and private placements. The documents are filed with national repositories.

√ Continuing disclosure occurs pursuant to undertakings or agreements into which your jurisdiction enters in securities transactions in accordance with SEC Rule 15c2-12.

√ It is important for your jurisdiction to file continuing disclosure reports in timely manner. Those reports are filed with designated national repositories.

√ An easy, inexpensive method of , but not the sole alternative for, filing a continuing disclosure report is through the central post office maintained at DisclosureUSA. Some private services will undertake the required filings in conjunction with other services they provide for a fee.

√ Similar investigative and review procedures to those used in the preparation of official statements apply as to the information contained in a continuing disclosure report.

√ If additional material information is relevant to the subject matter of the required continuing disclosure information, it is best to include the additional information in the continuing disclosure report.

√ CUSIP numbers (which should be contained in the official statement) should be placed on the cover of each continuing disclosure report to simplify filing, record keeping by the repositories, and access by interested parties.

√ Continuing disclosure reports should be filed as single documents in .pdf or other electronic formation.

√ With respect to investor inquiries to your jurisdiction, because investors may seek information from disparate sources within your jurisdiction, appoint a knowledgeable person to serve as a central contact in order to coordinate responses and avoid investor misinformation.

√ If material information is identified in connection with investor inquiries, make it available through an appropriate means to the market.

Disclosure after the issuance of municipal securities is important especially for informing investors and securities traders. With certain exceptions (such as short-term issues and limited placements), in connection with their financings, municipal securities issuers enter into continuing disclosure agreements or undertakings requiring at least

annual disclosure of specific categories of information, including financial statements. In certain financings, third-party "obligated persons" may have continuing disclosure responsibilities in addition to or instead of your jurisdiction.

Continuing disclosure is governed by Securities and Exchange Commission Rule 15c2-12. As contemplated in Rule 15c2-12, issuer continuing disclosure documents are delivered to designated Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs") and in a few states, state depositories. An easy, inexpensive way to do this is to send the documents to Disclosure USA (document uploading is made at *http://www.disclosureusa.org/*), as recommended by the Muni Council and recognized by the SEC. That website constitutes a Central Post Office for the purpose of receiving issuer disclosure documents and forwarding them to all the necessary Repositories and any state depositories. In the process, your jurisdiction can save money, since the filing process has been simplified significantly. In addition, some private services will undertake the required filings in conjunction with other services they provide for a fee.

By way of background, the Central Post Office maintained at DisclosureUSA is the result of a market-wide initiative, supported in concept by the SEC. In part, the Central Post Office is intended to resolve disputes over whether issuers have filed their continuing disclosure documents and to assist issuers through provision of filing receipts, ticklers (if desired), and security mechanisms to guard against inappropriate filings by nonissuer parties. In addition, the filing process is a simple procedure of uploading computer files.

The Muni Council, consisting of approximately 20 national organizations representing major municipal securities market sectors, strongly urges issuers and their dissemination agents (if any) to file continuing disclosure documents through the Central Post Office.

A failure to file, in a timely manner, required continuing disclosure reports must be disclosed in official statements for future transactions and could interfere with your jurisdiction's future financing activities.

Investigative and review procedures discussed herein for the financing process are useful, as well, for the process of continuing disclosure. Those procedures are directed toward the publication of materially accurate and complete disclosures to investors and, in the case of continuing disclosure, also the trading market. In particular, municipal securities issuers have been held responsible for their continuing disclosures, even when information is prepared by outside professionals. See, *e.g.*, *In the Matter of the City of Miami, FL*, SEC Release Nos. 33-8213, 34-47552 (March 21, 2003); *In the Matter of the City of San Diego*, SEC Rel. Nos. 33-8751, 34- 54745 (Nov. 14, 2006).

For that reason, in the process of making continuing disclosures pursuant to particular requirements of a continuing disclosure undertaking or agreement, consider whether other information relating to the subject matter may be material and also is best disclosed in the document. See, *e.g.*, *In the Matter of Utah Educational Savings Plan Trust*, SEC Release No. 33-8601 (Aug. 4, 2005). Because your jurisdiction's financial statements

contained in annual disclosure reports (including the notes to those financial statements) cover broad ranges of information, the universe of potentially relevant information may be substantial.

When multiple continuing disclosure documents are filed, they may be filed or catalogued incorrectly by the Repositories, and users may not be able to access them. Therefore, in assembling continuing disclosure reports, it is strongly advisable to file them as a unified document. That may mean attaching text, financial statements and other information into a single, integrated document. That can be accomplished by means of available ".pdf" [Adobe Acrobat] conversion software. If necessary, your jurisdiction may seek the assistance of outside auditors or other professionals for the purpose of attaching separate portions of the documents. Particularly because occasional changes do occur in tables or pagination in the ".pdf" document conversion process, the outside auditors should provide your jurisdiction with ".pdf" versions acceptable to them of the financial statements upon which the auditors are reporting.

The Repositories file and catalogue documents according to CUSIP numbers. Those numbers are obtained by the underwriters for each maturity at the time the securities are issued. It is critical to place the CUSIP numbers on the front covers of the continuing disclosure documents in order to facilitate the documents' filing and cataloguing, and user access. CUSIP numbers are used throughout the entire market in tracking the securities and related documentation and in trading the securities. Investors and securities traders (and others) use those numbers in seeking information on particular municipal securities.

The CUSIP numbers should be contained in the final official statements in the maturity table on the covers or, in some cases, elsewhere in a readily accessible location, such as the inside front cover. That way, your jurisdiction, investors and traders seeking to trade the securities have ready access to the CUSIP numbers, when needed.

In addition to annual or other periodic disclosures, municipal issuers (and obligated persons) also agree to make prompt disclosure of designated material events.[7] As specified in SEC Rule 15c2-12, those events are:

(1) Principal and interest payment delinquencies;

(2) Non-payment related defaults;

(3) Unscheduled draws on debt service reserves reflecting financial difficulties;

(4) Unscheduled draws on credit enhancements reflecting financial difficulties;

(5) Substitution of credit or liquidity providers, or their failure to perform;

[7] Some issuer continuing disclosure undertakings or agreements may refer to filing certain event notices with the Municipal Securities Rulemaking Board. As of December 2006, the MSRB, however, is seeking to terminate that facility, so filings formerly made to the MSRB would be made instead to the national repositories. See SEC Rel. No. 34-54863, "Proposed Amendments to Municipal Securities Disclosure" (Dec. 4, 2006).

(6) Adverse tax opinions or events affecting the tax-exempt status of the security;

(7) Modifications to rights of security holders;

(8) Bond calls,

(9) Defeasances;

(10) Release, substitution, or sale of property securing repayment of the securities; and

(11) Rating changes.

In addition, issuers agree to publish, in a timely manner, to each Repository, and to the appropriate state information depository, if any, notice of a failure to provide required annual financial information, on or before the date specified in the issuer's agreement or undertaking.

Key people within your organization should be made aware of the nature of the foregoing events, so that the necessary documents may be published in a timely manner upon the occurrence of such events.

Beyond the formal continuing reporting process involving document filings, many jurisdictions find that investors will contact officials with questions or to seek additional information. To coordinate responses and to prevent inconsistencies, confusion and inaccuracies, it is best to designate a specified contact person for that purpose. That person should have access to your office or to other professional advice as particular questions emerge.

Depending upon the frequency or nature of questions or information sought, particularly when previously unpublished material information may be identified, it may be advisable to file or publish additional information for all investors and the markets. Such a process may assist in avoidance of selective disclosure and potential trading on the basis of nonpublic material information.

I. WEBSITES

KEYPOINT CHECKLIST

√ Be aware that investors may use your jurisdiction's website as a source of information.

√ Websites, if properly used and maintained, can be a useful form of communication with the investment community for the benefit of your jurisdiction. If not properly managed, however, websites can be problematic.

√ Appoint a knowledgeable person to be in charge of website oversight with respect to investor information.

√ Consider seeking professional advice regarding your jurisdiction's website's operation and, as appropriate, particular information that may be placed thereon.

√ Identify information for investors and segregate it from other website information that serves nondisclosure purposes.

√ Review website investor information for material accuracy and completeness with respect to the subject matters included on the website

√ Keep investor information materially current, and identify it as to date.

√ Outdated ("stale") information should either be removed from the website or clearly identified as such in a segregated in a clearly identified archive.

√ Be careful of links to the websites of other parties. Inform users of your jurisdiction's website that they are leaving the website and that your jurisdiction does not warrant the accuracy or completeness of the information on those other websites.

Your jurisdiction may utilize a website to provide information to a variety of constituents. Among other things, websites can be a form of continuing disclosure. In addition to others, the users of websites may include investors or potential investors and traders in your jurisdiction's securities. If maintained properly, monitored carefully, and updated appropriately, a special website page for investors can be an effective and helpful means of communicating with the investment community, and thereby, enhancing the market reception for your jurisdiction. If not maintained properly, however, a website may lead to investor misinformation and confusion and other potentially serious problems. See generally "*Local Governments, Securities Laws and Websites*," in the Jan./Feb. 2004 issue of Municipal Lawyer.

Care is advisable with respect to the statements made on such a website. The website may present statements made by political leaders, minutes of meetings of your jurisdiction's governing body and committees and other bodies, information to citizens

about selected issues, information to shoppers or tourists who may wish to visit your jurisdiction, and information directed to a variety of other parties, other than investors. Those sources may contain casual statements not intended to inform, and that may mislead, investors.

It is better to segregate and to identify clearly the information intended for investors. That information should be reviewed carefully as to accuracy and completeness with respect to the subject matter of the information. It is best to appoint a knowledgeable person to be in charge of website oversight with respect to investor information.

To avoid misunderstandings, identify investor information on a website as to the date as of which the information speaks.

Information on websites may be out of date ("stale"). Examples include prior official statements, continuing disclosure documents and prior years' financial statements and budgets. Material changes may have occurred in the interim. If such outdated information is included on the website, it is best placed in an archive, in a segregated location, and identified clearly (perhaps with a pop-up threshold screen) as archived and out-of-date.

Another matter for care is the use of links to information provided by third parties for which an issuer is not responsible. Such links may lead, for example, to websites maintained by chambers of commerce, tourist bureaus, local attractions, real estate associations or others who are interested in promotional activities, rather than investor disclosure. When such links are used, issuers may utilize special pop-up threshold screens to inform website users that they are leaving the issuer's website, and that the issuer does not accept responsibility for third party information.

Consider seeking professional advice regarding your jurisdiction's website's operation and, as appropriate, particular information that may be placed thereon.

SELECTED RESOURCES

You may find the following selected resources to be helpful (most of the SEC documents are available at *www.sec.gov*):

- Securities and Exchange Commission Rule 15c2-12
- SEC Release No. 34-26100 (Sept. 28, 1988) (proposing Rule 15c2-12 for offerings of municipal securities)
- SEC Release No. 34-26985 (July 10, 1989) (adopting Rule 15c2-12 for offerings of municipal securities)
- SEC Staff Report on the Municipal Securities Market (Sept. 1993)
- Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, SEC Release Nos. 33-7049, 34-33741 (March 9, 1994)
- SEC Release No. 34-33742 (March 9, 1994) (proposing continuing disclosure amendments to Rule 15c2-12)
- SEC Release No. 34-34961 (Nov. 10, 1994) (adopting continuing disclosure amendments to Rule 15c2-12)
- SEC Rel. No. 34-54863 (Dec. 4, 2006) (proposing amendments to SEC Rule 15c2-12 regarding proposed termination of a continuing disclosure facility maintained by the Municipal Securities Rulemaking Board)
- *In the Matter of the City of Anaheim, City of Irvine, Irvine Unified School District and Orange County Board of Education, CA*, SEC Release No. 33-7590 (Sept. 29, 1998); *In the Matter of the City of Anaheim, City of Irvine, Irvine Unified School District, Orange County Board of Education, CA*, SEC Release No. 33-7696 (July 1, 1999)
- *In the Matter of Carthage, MS, et al.*, SEC Release Nos. 33-7554, 34-40194 (July 13, 1998)
- *In the Matter of Dauphin County, PA, General Authority*, SEC Release No. 33-8415 (Apr. 26, 2004)
- *Trimble, et al. v. Holmes Harbor Sewer District, et al*., Class Action No. 01-2-00751-8 (Third Amended Complaint dated Sept. 2002, Super. Ct. of Island County, WA); *Trimble, et al. v. Holmes Harbor Sewer District, et al*., Class Action No. 01-2-00751-8 (Settlement Agreement dated Nov. 2003, at 3, 8, Super. Ct. of Island County, WA).
- *In the Matter of the City of Ione, CA*, SEC Release No. 33-7537 (May 5, 1998)

- *In the Matter of Maricopa County, AZ*, SEC Release Nos. 33-7354, 34-37779 (Oct. 3, 1996)

- *In the Matter of the Massachusetts Turnpike Authority and James J. Kerasiotes*, SEC Release No. 33-8260 (July 31, 2003)

- *In the Matter of the City of Miami, FL*, SEC Release Nos. 33-8213, 34-47552 (March 21, 2003); *In the Matter of the City of Miami, FL, Cesar Odio and Manohar Surana*, SEC Initial Decision Release No. 185 (June 22, 2001); *In the Matter of Odio*, SEC Release Nos. 33-7851, 34-42690, Accounting and Auditing Enforcement Release No. 1248 (Apr. 14, 2000); *In the Matter of Surana*, SEC Release Nos. 33-7895, 34-43325 (Sept. 22, 2000)

- *In the Matter of City of Moorhead, MS*, SEC Release Nos. 33-7585, 34-40478 (Sept. 24, 1998); *In the Matter of City of Moorhead, MS*, SEC Release Nos. 33-7616, 34-40770 (Dec. 10, 1998)

- *In the Matter of Neshannock Township, PA, School District*, SEC Release Nos. 33-8411, 34-49600 (Apr. 22, 2004)

- *In the Matter of the County of Nevada, CA, et al.*, SEC Release No. 33-7535 (May 5, 1998); *In the Matter of the County of Nevada, et al*., Order Instituting Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, SEC File No. File No. 3-9542.

- *In the Matter of Newport-Mesa Unified School District, CA*, SEC Release No. 33-7589 (Sept. 29, 1998)

- **FINAL REPORT IN THE MATTER OF TRANSACTIONS IN THE SECURITIES OF THE CITY OF NEW YORK**, SEC Release Nos. 33-6021, 34-15547 (Feb. 5, 1979)

- *In the Matter of County of Orange, California; Orange County Flood Control District; and County of Orange, California Board of Supervisors*, Release Nos. 33-7260, 34-36760 (Jan. 24, 1996); *SEC v. Citron and Raabe*, Litigation Release No. 14913 (May 17, 1996)

- **REPORT OF INVESTIGATION IN THE MATTER OF COUNTY OF ORANGE, CA, AS IT RELATES TO THE CONDUCT OF THE MEMBERS OF THE BOARD OF SUPERVISORS**, SEC Release No. 34-36761 (Jan. 24, 1996)

- *SEC v. Reclamation District No. 2090, CA, et al.*, Civ. Action No. 76-1231-SAW (N.D. Cal.), SEC Litigation Release No. 7460 (June 22, 1976); *SEC v. Reclamation District No. 2090, et al.*, SEC Litigation Release No. 7551 (Sept. 8, 1976)

- *SEC v. San Antonio Municipal Utility District No. 1, et al.*, Civ. Action No. H-77-1868 (S.D. Tex.), SEC Litigation Release No. 8195 (Nov. 18, 1977)

- *In the Matter of the City of San Diego*, SEC Rel. Nos. 33-8751, 34-54745 (Nov. 14, 2006)

- *SEC v. Senex Corp.*, 399 F.Supp. 497 (E.D. KY 1975), *aff'd per curiam* No. 75-1656 (6th Cir. May 7, 1976); SEC Lit. Rels. Nos. 6451 (July 24, 1974), 6769 (March 5, 1975), and 8651 (Jan. 23, 1979); *In the Matter of Ferguson*, SEC Rel. No. 5523 (August 21, 1974)

- *In the Matter of the City of Syracuse, NY, Warren D. Simpson, and Edward D. Polgreen*, SEC Release Nos. 33-7460, 34-39149, Accounting and Auditing Enforcement Release No. 970 (Sept. 30, 1997)

- *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 2132, 48 L.Ed.2d 757 (1976); *Basic Inc. v. Levinson*, 485 U.S. 224, 232, 108 S.Ct. 978, 983, 99 L.Ed.2d 194 (1987)

- *In the Matter of Utah Educational Savings Plan Trust*, SEC Release No. 33-8601 (Aug. 4, 2005); *SEC v. Hatch*, Case No. 2:05CV00654 PGC (C.D. Utah), SEC Litigation Release No. 19324 (Aug. 4, 2005)

- *In the Matter of Wasco, CA, Public Financing Authority*, SEC Release No. 33-7536 (May 5, 1998)

- *SEC v. Washington County Utility District, TN, et al.*, Civ. Action No. 2-77-15 (E.D. Tenn.), SEC Litigation Release No. 7782 (Feb. 15, 1977); *SEC v. Washington County Utility District, TN, et al.*, SEC Litigation Release No. 7868 (Apr. 14, 1977)

- **STAFF REPORT ON THE INVESTIGATION IN THE MATTER OF TRANSACTIONS IN WASHINGTON PUBLIC POWER SUPPLY SYSTEM SECURITIES** (Sept. 1988)

- *SEC v. Whatcom County Water District No. 13,WA, et al.*, Civ. Action No. C77-103 (W.D. Wash.), SEC Litigation Release No. 7810 (Mar. 7, 1977); *SEC v. Whatcom County Water District No. 13,WA, et al.*, SEC Litigation Release No. 7592 (May 10, 1977)

- **QUESTIONS TO ASK BEFORE YOU APPROVE A BOND ISSUE—A POCKET GUIDE FOR ELECTED AND OTHER PUBLIC OFFICIALS**, prepared by the National League of Cities; the National Association of Counties; the National Association of State Auditors, Comptrollers and Treasurers; and the Government Finance Officers Association

- National Federation of Municipal Analysts, **BEST PRACTICES IN DISCLOSURE** at *www.nfma.org*

- American Bar Association Section of Local Government Law and National Association of Bond Lawyers, **DISCLOSURE ROLES OF COUNSEL IN STATE AND LOCAL GOVERNMENT SECURITIES OFFERINGS**

- "*Local Governments, Securities Laws and Websites*," Municipal Lawyer (Jan./Feb. 2004)

- Information available at *www.disclosureusa.org*

- Municipal Securities Rulemaking Board Rules at *www.msrb.org*

- Real time municipal securities trading data at *www.investinginbonds.com*